

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214603

DATE: July 25, 1984

MATTER OF: Westwood Pharmaceuticals Inc.

DIGEST:

1. Protest alleging deficiency in invitation for bids is untimely when filed after bid opening, since GAO Bid Protest Procedures require protests based upon alleged solicitation defects which were apparent before bid opening to be filed by that time.
2. Protest objecting to cancellation of invitation for bids not received in our Office within 10 working days after the protester knew or should have known the basis of the protest is untimely and will not be considered.
3. Although the protester alleges that it did not know of the requirement concerning the time for filing of a GAO protest, an untimely protest may not be considered because bidders are on constructive notice of the requirement.

Westwood Pharmaceuticals Inc. (Westwood) protests invitation for bids (IFB) M5-34-84 issued by the Veterans Administration (VA).

IFB M5-34-84 is the successor to IFB M5-56-83 and covers each of the five medical items covered by the original IFB. Westwood objects to IFB M5-34-84 on the ground that the salient characteristic of therapeutic equivalence to the Westwood brand was deleted from the IFB and that no substitute requirement for therapeutic equivalence was included in the IFB. Westwood also objects to the VA canceling IFB M5-56-83 and states that the action was prejudicial to it since its prices had been exposed. Bids on IFB M5-34-84 were opened at 10:30 a.m., February 1, 1984. We received Westwood's protest on March 9, 1984.


Westwood's protest of the deletion of the salient characteristic under IFB M5-34-84 concerns an alleged impropriety in the solicitation. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), such protests must be filed prior to bid opening. Since Westwood's protest was not filed prior to bid opening, it is untimely. See Lamptek Co., B-206841, June 22, 1982, 82-1 C.P.D. ¶ 616.

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Westwood's objection to the cancellation of IFB M5-56-83 is also untimely. Westwood was advised of the cancellation by letter dated October 31, 1983, from the VA. However, Westwood's protest was not filed (i.e., received) with our Office until March 9, 1984. Section 21.2(b)(2) (1983) of our Bid Protest Procedures requires protests to be filed with our Office not later than 10 working days after the basis for protest is known or should have been known.

Although Westwood states that it was unaware of our regulations regarding the timeliness of protests, this does not provide a basis for our Office to waive our procedures because bidders are on constructive notice of our Bid Protest Procedures since they are published in the Federal Register and the Code of Federal Regulations. See Ken's Trash Removal Service - Reconsideration, B-213715.2, Feb. 28, 1984, 84-1 C.P.D. ¶ 247.

The protest is dismissed.


For Harry R. Van Cleve
Acting General Counsel